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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIN GURSSLIN,

Plaintiff,

Civil Action No. 20-cv-6508

v.

THE CITY OF ROCHESTER, a municipal entity, POLICE
OFFICER JEREMY NELLIST, POLICE OFFICER JOSHUA
KELLY, COMMANDER FABIAN RIVERA, LIEUTENANT AARON
SPRINGER,

Defendants.

Remote Deposition Upon Oral Examination:

Sergeant Joshua Paul Kelly

Date: February 22, 2023

Time: 10:00 a.m.

Reported By: Jayme C. Wintish

Alliance Court Reporting, Inc.

109 South Union Street, Suite 400

Rochester, New York 14607



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A P P E A R A N C E S

Appearing Remotely on Behalf of Plaintiff:

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Also Present Remotely:

Dave Parrotta, Videographer

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1 S T I P U L A T I O N S

2 WEDNESDAY, FEBRUARY 22, 2023;

3 (Proceedings in the above-titled matter
4 commencing at 10:04 a.m.)

5 * * *

6 IT IS HEREBY STIPULATED by and between the
7 attorneys for the respective parties that this
8 deposition may be taken by the Plaintiff at this time
9 pursuant to subpoena;

10 IT IS FURTHER STIPULATED, that all
11 objections except as to the form of the questions and
12 responsiveness of the answers, be reserved until the
13 time of the trial;

14 IT IS FURTHER STIPULATED, that pursuant to
15 Federal Rules of Civil Procedure 30(e)(1) the witness
16 requests to review the transcript and make any
17 corrections to same before any Notary Public;

18 IT IS FURTHER STIPULATED, that if the
19 original deposition has not been duly signed by the
20 witness and returned to the attorney taking the
21 deposition by the time of trial or any hearing in this
22 cause, a certified transcript of the deposition may be
23 used as though it were the original;

24 IT IS FURTHER STIPULATED, that the
25 attorneys for the parties are individually responsible



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1 P R O C E E D I N G S

2 for their certified transcript charge, including any
3 expedite or other related production charges;

4 AND IT IS FURTHER STIPULATED, that the
5 Notary Public, JAYME C. WINTISH, may administer the
6 oath to the witness.

7 * * *

8 THE COURT REPORTER: Will counsel please
9 stipulate to me remotely swearing in the witness
10 located in New York State; that counsel will not
11 object to the admissibility of the transcript based on
12 proceeding in this way and that the witness has
13 verified that he is, in fact, Sergeant Joshua Paul
14 Kelly?

15 MS. JONES: Yes. Defendants will.

16 MR. SHIELDS: Plaintiff stipulates.

10:04:36 17 THE VIDEOGRAPHER: We are on the record at
10:04:38 18 10:04 a.m. Today is Wednesday, February 22nd, 2023.
10:04:47 19 I am David Parrotta for Alliance Court Reporting
10:04:49 20 located at 109 South Union Street, Suite 400, in
10:04:54 21 Rochester, New York. We are at the offices of
10:04:54 22 Alliance Court Reporting.

10:04:57 23 We are about to begin the video-recorded
10:04:59 24 deposition of Joshua P. Kelly in the matter of Erin
10:05:04 25 Gursslin, Plaintiff, versus the City of Rochester, a



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1 SERGEANT JOSHUA PAUL KELLY - BY MR. SHIELDS

01:55:27 2 A. I can't recall.

01:55:28 3 Q. Okay. After the academy, other than your
01:55:34 4 SWAT training, tell me all the training that you've
01:55:37 5 received about interacting with dogs.

01:55:45 6 A. I believe it was either Animal Control or
01:55:45 7 the SPCA, possibly a representative from them, maybe
01:55:51 8 came out and taught a PowerPoint. And I think there
01:55:59 9 might have been one other training, but I can't recall
01:56:03 10 the specifics of it.

01:56:03 11 Q. Okay. Now, if -- if I say to you that it
01:56:12 12 wasn't the ASPCA, but, you know, the documents that
01:56:15 13 the City has produced in the case show that it was
01:56:19 14 like the Human Society, does that sound right to you?

01:56:23 15 A. Yeah. Possibly.

01:56:24 16 Q. Okay. Did you review that PowerPoint
01:56:28 17 before your deposition today to prepare for your
01:56:31 18 deposition?

01:56:32 19 A. I briefly looked at it.

01:56:34 20 Q. Okay. Prior to reviewing that PowerPoint
01:56:38 21 in preparation for today's deposition, when is the
01:56:41 22 last time that you had looked at that document?

01:56:44 23 A. The day that it was presented to me.

01:56:48 24 Q. Okay. Do you remember when that training
01:56:51 25 was?



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01:56:59 2 A. Maybe -- if I had to guess, maybe 2017 or
01:57:07 3 2019 or...

01:57:10 4 Q. Okay. You don't remember if it was before
01:57:12 5 or after this incident?

01:57:13 6 A. No, sir. I don't.

01:57:15 7 Q. Tell me everything that you remember about
01:57:18 8 that training.

01:57:20 9 MS. JONES: Objection.

01:57:22 10 Go ahead.

01:57:23 11 A. I remember them going over some of the
01:57:27 12 visual cues about a dog.

01:57:31 13 Q. Okay. Did you watch any videos at that
01:57:34 14 training?

01:57:38 15 A. I don't remember any video in particular,
01:57:41 16 but I'm sure there was.

01:57:43 17 Q. Okay. What did you learn at that
01:57:46 18 training?

01:57:49 19 A. Indicators for dog behavior.

01:57:54 20 Q. Okay. Anything else?

01:57:57 21 A. That's specifically what I remember.

01:58:01 22 Q. Okay. And was that training geared
01:58:04 23 towards dealing with aggressive dogs?

01:58:10 24 A. I don't remember if it was geared towards
01:58:14 25 an aggressive dog or a docile dog. I just -- I



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01:58:17 2 remember them going over different characteristics

01:58:22 3 that a dog might exhibit visually to give you

01:58:27 4 indicators as far as what their possible state of mind

01:58:33 5 might be.

01:58:33 6 Q. Okay. And indicators as to whether or not
01:58:42 7 they might be attacking or about to attack?

01:58:46 8 A. Yeah.

01:58:48 9 MS. JONES: Objection.

01:58:48 10 A. Indicators for possible aggressiveness or
01:58:53 11 playfulness.

01:58:55 12 Q. Okay. Do you remember anything about how
01:58:58 13 to tell whether a dog is approaching you in an
01:59:05 14 aggressive manner versus approaching you just to greet
01:59:11 15 you like a normal dog would do, you know, if you
01:59:14 16 entered its yard that you learned at the training?

01:59:17 17 MS. JONES: Objection.

01:59:18 18 Go ahead.

01:59:19 19 A. I can try to give you an idea. It's hard
01:59:27 20 to differentiate between life experience and what I
01:59:30 21 remember from that training and if they're crossing
01:59:34 22 paths or if one was from life experience.

01:59:38 23 Q. Okay. So what I'm try to figure out is,
01:59:44 24 is there anything you took away from that training
01:59:48 25 about how to differentiate between a dog that might be



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01:59:53 2 a threat versus one that you might misperceive as a
01:59:58 3 threat, but really is not a threat?

02:00:01 4 A. Okay. I think, from what I can remember,
02:00:06 5 they talked about hair standing up on the back of a
02:00:09 6 dog's neck, the stance it takes, the showing of teeth,
02:00:20 7 the audible sounds it may make, as far as whether it's
02:00:29 8 growling or barking. Just the overall posture.

02:00:39 9 Q. Was there any discussion of how to avoid
02:00:44 10 using a firearm against a dog that you perceive as a
02:00:50 11 threat?

02:00:51 12 A. I can't recall if they went over less
02:00:56 13 lethal options or not in that.

02:01:00 14 Q. Other than less lethal options, do you
02:01:06 15 remember if they went over any other ways to avoid
02:01:09 16 shooting a dog that you perceived as a threat?

02:01:13 17 MS. JONES: Objection.

02:01:14 18 A. Not that I can recall.

02:01:18 19 Q. Okay. Does the annual firearms training
02:01:24 20 involve dog-shooting scenarios?

02:01:29 21 A. Are you talking about like the
02:01:33 22 qualification?

02:01:33 23 Q. Correct.

02:01:35 24 A. No, sir.

02:01:36 25 Q. Are there any other incidents where you



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1 SERGEANT JOSHUA PAUL KELLY - BY MR. SHIELDS

02:01:41 2 have shot a dog?

02:01:43 3 A. Yes, sir.

02:01:44 4 Q. When was that?

02:01:47 5 A. I'd have to look at the document to give
02:01:53 6 you an exact day, but it was last year in 2022.

02:01:58 7 Q. Okay. What month?

02:02:00 8 A. Again, I'd have to see the document to
02:02:05 9 remember exactly what month it was.

02:02:05 10 (Document request - all incident reports and
02:02:05 11 body-worn camera footage)

02:02:09 12 MR. SHIELDS: Okay. I'm going to call for
02:02:12 13 production of all incident reports, IRs, body-worn
02:02:18 14 cameras related to this incident to the extent they
02:02:21 15 haven't been provided.

02:02:22 16 And Peachie, do you have any idea sitting
02:02:25 17 here right now if those have been produced?

02:02:30 18 MS. JONES: First, I need you to follow up
02:02:33 19 in writing for any requests for the productions. And
02:02:36 20 second, no, I don't think they have been produced.

02:02:40 21 MR. SHIELDS: Okay. We're going to have
02:02:42 22 to call him back and ask him additional questions
02:02:44 23 about this incident. This is something that's
02:02:48 24 critical to the case that I should have had, that you
02:02:52 25 should have told me about. We've demanded -- it's



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1 SERGEANT JOSHUA PAUL KELLY - BY MR. SHIELDS

02:03:12 2 something that's responsive to our demands. It's
02:03:12 3 something that's responsive to our demands. And it's
02:03:17 4 obviously something that's critical to the claims in
02:03:17 5 our case.

02:03:21 6 MS. JONES: Yeah. I disagree that it's
02:03:23 7 critical or that we should have responded prior to
02:03:26 8 today's deposition.

02:03:29 9 MR. SHIELDS: You don't think you needed
02:03:31 10 to turn over body-worn camera footage or records
02:03:37 11 related to -- okay. Well, will you agree to reproduce
02:03:39 12 Sergeant Kelly so that I can ask him questions about
02:03:43 13 this 2022 dog-shooting incident after you respond to
02:03:48 14 my demands that encompass the body-worn camera in the
02:03:53 15 records related to that incident?

02:03:56 16 MS. JONES: No.

02:03:57 17 MR. SHIELDS: Okay. We'll make a motion.

02:03:59 18 MS. JONES: Elliott, it didn't happen in
02:04:04 19 2022 -- I'm sorry. The incident -- the most recent
02:04:05 20 was in 2022, and the incident in this lawsuit was in
02:04:09 21 2018.

02:04:10 22 MR. SHIELDS: Correct. And it goes to the
02:04:25 23 Monell claims in the case, the policy and practice
02:04:25 24 claims against the City of Rochester in the case. And
02:04:28 25 if it wasn't relevant to those claims, then there



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02:04:32 2 would have been no reason for you to produce all of
02:04:36 3 the other dog-shooting incident reports and body-worn
02:04:38 4 cameras that post-dated the other incidents in this
02:04:42 5 lawsuit and the other lawsuit. So you know that it's
02:04:46 6 relevant. And you should have produced it.

02:04:49 7 MS. JONES: Like I said, you can follow up
02:04:52 8 in writing, but we're not agreeing to produce Sergeant
02:04:55 9 Kelly again.

02:04:57 10 Q. Okay. Sergeant Kelly, can you please tell
02:05:00 11 me everything about that most recent dog-shooting
02:05:06 12 incident in 2022 that you can recall?

02:05:09 13 A. Yes, sir. There was a call for shots
02:05:15 14 fired in the area of Kappel Place, I believe.
02:05:31 15 Officers responded, and they encountered some people
02:05:38 16 outside. And I don't know the exact address. I don't
02:05:43 17 want to give you any wrong information. But they
02:05:46 18 encountered some people outside. They became
02:05:52 19 uncooperative and officers located casings for -- I
02:05:59 20 believe it was a handgun located in the property in
02:06:06 21 the -- I guess on a makeshift piece of concrete off to
02:06:12 22 the side. At that point in time, based upon the
02:06:17 23 information, I went over to assist the officers and
02:06:23 24 the residents continued to open the door, yell and
02:06:30 25 being very uncooperative.



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02:06:33 2 At some point during this, information was
02:06:35 3 received. I think it was one of the people opened the
02:06:39 4 door and said something about legally owning handguns
02:06:44 5 or something along the lines of a pistol permit. At
02:06:49 6 that point in time, another sergeant and I determined
02:06:53 7 that it wasn't worth it to stay out there and try to
02:07:00 8 get cooperation out of the people from this residence.

02:07:07 9 I directed my personnel to recover the
02:07:13 10 casings, photograph them as evidence, and then we were
02:07:18 11 planning on leaving the area. As they were collecting
02:07:24 12 this -- the casings, I was positioned between them and
02:07:27 13 the house along with another SWAT member who was
02:07:33 14 working patrol for me at the time. At that point in
02:07:38 15 time, the resident opened the door and a -- she
02:07:43 16 started to yell something that -- I can't recall what
02:07:46 17 it was -- but a dog came running out of the house at
02:07:52 18 that point in time. The dog ran -- kind of looped
02:07:58 19 just a little bit, and then ran directly at me. When
02:08:02 20 it got within I'd say 5 feet I fired one round.

02:08:09 21 Q. Did the round strike the dog?

02:08:13 22 A. Yes, sir.

02:08:14 23 Q. And did the dog die?

02:08:17 24 A. I don't believe so.

02:08:20 25 Q. Were there other people around when you



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02:08:25 2 shot the dog?

02:08:26 3 A. There was other officers on the scene.

02:08:30 4 Q. Okay. And behind you -- was the house
02:08:35 5 behind you or something else?

02:08:37 6 A. The way the dog came out and the way I
02:08:42 7 positioned, I was facing back towards the street.

02:08:47 8 Q. Away from the house that the dog exited
02:08:50 9 from?

02:08:50 10 A. Yes, sir.

02:08:51 11 Q. Were there other houses down range from
02:08:55 12 where you fired?

02:08:57 13 A. Yes, sir.

02:08:57 14 Q. What time of day was it?

02:08:59 15 A. I work first platoon, which is -- which
02:09:06 16 you'd consider a midnight shift, from 11 at night
02:09:11 17 until 7 in the morning. It happened sometime, I'd
02:09:14 18 say, between -- again, this is a rough estimate --
02:09:17 19 between probably 2 and 4 o'clock.

02:09:25 20 Q. Was it dark outside?

02:09:32 21 A. I'm sorry?

02:09:33 22 Q. I'm sorry. I cut you off.

02:09:33 23 A. It's okay.

02:09:33 24 Q. My question was, was it dark outside?

02:09:33 25 A. Yes, sir.



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1 SERGEANT JOSHUA PAUL KELLY - BY MR. SHIELDS

02:09:37 2 Q. What kind of dog was it?

02:09:39 3 A. I believe it was a pit bull.

02:09:43 4 Q. How big was the dog?

02:09:47 5 A. I guess, if I had to judge by size, I'd
02:09:54 6 say it was a decent-sized dog.

02:09:56 7 Q. Had the dog tried to bite anybody before
02:09:59 8 you shot it?

02:10:01 9 A. I don't think it charged at anybody else
02:10:07 10 other than me.

02:10:08 11 Q. Okay. Did it bark or growl before it
02:10:17 12 charged at you?

02:10:18 13 A. That, I can't recall.

02:10:21 14 Q. Okay. Did you have your pepper spray on
02:10:26 15 you?

02:10:26 16 A. Yes, sir. I did.

02:10:27 17 Q. Did you have a Taser on you?

02:10:29 18 A. At that time, I can't recall if I had it
02:10:33 19 on me or not.

02:10:34 20 Q. Did you consider using any other less
02:10:38 21 lethal options instead of firing your gun?

02:10:41 22 A. No, sir.

02:10:42 23 Q. And why not?

02:10:43 24 A. I didn't feel as if I had time.

02:10:46 25 Q. Could you have kicked the dog?



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02:10:52 2 MS. JONES: Objection.

02:10:54 3 Go ahead.

02:10:55 4 A. I guess that's always an option.

02:10:58 5 Q. Is there anything else you could have done
02:11:03 6 to avoid shooting that dog?

02:11:05 7 MS. JONES: Objection.

02:11:06 8 A. In this circumstance?

02:11:09 9 Q. Correct.

02:11:09 10 A. I don't feel as if I could have.

02:11:13 11 Q. So the Sergeant usually signs the incident
02:11:18 12 report when a dog is shot; correct?

02:11:21 13 MS. JONES: Objection.

02:11:22 14 A. A sergeant generally writes up the report
02:11:25 15 when an officer shoots a dog.

02:11:29 16 Q. But you were the sergeant at the scene;
02:11:31 17 correct?

02:11:32 18 A. That's correct.

02:11:33 19 Q. So did you sign -- did you write up the
02:11:36 20 report or someone else?

02:11:38 21 A. No, sir. Someone else did.

02:11:40 22 Q. Okay. Who wrote up that report?

02:11:42 23 A. Lieutenant Bing Reaves, R-E-A-V-E-S.

02:11:58 24 Q. And did you review your body-worn camera
02:12:06 25 footage from that incident?



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02:12:06 2 A. Yes, sir. I did.

02:12:07 3 Q. And do you know if Lieutenant Reaves
02:12:11 4 reviewed your body-worn camera from that incident?

02:12:13 5 MS. JONES: Objection.

02:12:15 6 A. I'm assuming he did, but I can't speak for
02:12:18 7 the lieutenant.

02:12:21 8 Q. Okay. Do you know if anyone else reviewed
02:12:24 9 the body-worn camera footage from that incident?

02:12:26 10 MS. JONES: Objection.

02:12:27 11 A. That, I don't know.

02:12:28 12 Q. Do you know if the incident was reviewed
02:12:31 13 by PSS?

02:12:32 14 A. That, I don't know.

02:12:34 15 Q. Okay. Do you know if the incident from
02:12:37 16 September 6th, 2018, was reviewed by PSS?

02:12:41 17 MS. JONES: Objection.

02:12:42 18 A. No, sir. I don't know.

02:12:44 19 Q. Okay. From either of the two incidents
02:12:51 20 that we've spoken about, no one from PSS ever came and
02:12:58 21 spoke with you about the incident; correct?

02:13:01 22 MS. JONES: Objection.

02:13:01 23 A. Not that I can recall.

02:13:03 24 Q. Okay. They never required you to answer
02:13:07 25 any questions in writing either; correct?



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02:13:09 2 MS. JONES: Objection.

02:13:09 3 A. No, sir.

02:13:13 4 Q. Are there any other incidents where you've
02:13:16 5 shot a dog?

02:13:17 6 A. No, sir.

02:13:19 7 Q. Okay. Are there any other incidents where
02:13:21 8 you've used less lethal force against a dog?

02:13:25 9 A. No, sir.

02:13:37 10 Q. Were you required to get any type of
02:13:39 11 additional training after you shot the dog in 2022?

02:13:39 12 A. No, sir.

02:13:39 13 (There was a discussion off the record.)

02:14:11 14 THE VIDEOGRAPHER: It's 2:14 p.m. We're
02:14:11 15 going off the record.

02:14:11 16 (The proceeding recessed at 2:13 p.m.)

02:14:11 17 (The proceeding reconvened at 2:25 p.m.;
02:14:11 18 appearances as before noted.)

02:25:49 19 THE VIDEOGRAPHER: It's 2:25 p.m. We're
02:25:51 20 back on the record.

02:25:51 21 SERGEANT JOSHUA PAUL KELLY, resumes;

02:25:53 22 CONTINUING EXAMINATION BY MR. SHIELDS:

02:25:53 23 Q. Good afternoon, Sergeant Kelly. Same
02:25:56 24 questions as before. After we took the break, did you
02:26:00 25 have an opportunity to speak with your attorney during



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